IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3508 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

NOORU ISMAIL @ BADEVALA S/O ABDUL SHAKUR SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR SP HASURKAR for Respondent No. 1

Ms.S.S.Talati, A.G.P. for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/11/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the prayer in the nature of

certiorari is for quashing the detention order dated 25.3.1998 and writ in the nature of habeas corpus is for releasing the petitioner forthwith from illegal detention.

2. brief facts giving rise to this petition as as under :

The Commissioner of Police, Ahmedabad City, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-social Activities Act (for short "PASA Act") passed the impugned detention order on 25.3.1998 and simultaneously furnished grounds of detention to the petitioner. From the said grounds of detention it seems that the detaining Authority was satisfied that the petitioner is a bootlegger within the meaning of Section 2(b) of the PASA and he is repeatedly indulging in anti-social activities of threatening the witnesses and assaulting them in connecting with his bootlegging activities which is likely to disturb public order and has also disturbed the public order on 16.2.1998, 23.2.1998, 7.3.1998 and 3.3.1998 respectively. Finding the activities of the petitioner to be prejudicial to maintenance of public order and after considering the other alternative efficacious remedy the detaining Authority found that the preventive detention was the only effective remedy to put a hault to the anti-social activities of the petitioner. Consequently the impugned detention order was passed. It is this order which is under challenge in this petition.

3. The sole grounds on which the order of detention has been challenged is that the activities of the petitioner disclosed in the grounds of detention are neither prejudicial to maintenance of public order nor are likely to be prejudicial for maintenance of public order. Hence, the impugned order is illegal. The learned A.G.P. on the other hand contended that the subjective satisfaction of the detaining Authority from the material on record is to the effect that the activities of the petitioner are prejudicial to maintenance of public order hence there is no occasion for interference in the detention order in this writ petition. One case was cited by the learned Counsel for the petitioner and the other by the learned A.G.P.

4. Learned A.G.P. relying on the pronouncement of this Court in the Gopal Gangaram Nepali v/s. Commissioner of Police, Ahmedabad City, reported in 1996 (3) G.L.R. 823, contended that the facts of this case are identical to the facts of this writ petition and as such the ratio of this case can be applied for up-holding the

impugned order of detention. since this case is frequently being cited from the side of the respondent, it is necessary to consider the ratio of this case, more particularly in view of pronouncement of the Supreme Court in Piyush Kantilal Mehta v/s. Commissioner of Police, Ahmedabad, reported in AIR 1989 SC 491 which was followed in a subsequent decision of the Apex Court in Rashidmiya @ Chhava Ahmedmiya Shaikh v/s. Police Commissioner, Ahmedabad, reported in AIR 1989 SC 1703.

5. In order to apply the ratio of these three cases the facts of the instant writ petition have also to be kept in mind. Neither the Apex Court verdict nor the verdict of this Court can be applied in isolation of facts.

6. Learned A.G.P. has relied upon a case of Gopal Gangaram Nepali (supra) where public order and law and order was considered by this Court. The concept of public order and law and order has been considered in various cases by the Apex Court and the emphasis of the Apex Court has been in all these cases that there is marked difference between the "Law and order" and "public order" and generally the authority is confusing law and order with public order. Law and order situation is created which can be effectively dealt with under various provisions of the Indian penal Code or Special Criminal Acts. Disturbance of public order, on the other hand is something more than the disturbance of law and order. Disturbance of law and order crosses its limit of law and order and reaches the realm of public order only when by prejudicial activities of the petitioner the public at large, may be in a particular area or locality, is affected by prejudicial activities. Mere annoyance of the public by prejudicial activity or activities of the detenu does not amount to disturbance of public order. Public order is said to have been disturbed when even tempo of the life of the society or the residents of locality in a particular area is disturbed. If the peace and tranquility of the public at large in a particular area is disturbed it is said that the situation creating public disorder has been created. The word "public" itself connotes involvement of more than one person in the activity of the petitioner. If single individual on isolated incident is affected it cannot be said that public order has been disturbed. On the other hand if more than one individual or public in general, may be of a limited area, is affected then only it can be said that the activities of the detenu are prejudicial to maintenance of public order. In this light the activities of the petitioner have to be considered so

also the case of Gopal Gangaram Nepali (supra).

7. In the case of Gopal Gangaram (supra) this Court observed that what is required to be considered by the Court to decide is whether the activity of the detenu affects law and order or public order. In the opinion of this court the length and breadth of the activity, effect of the activity and the purpose of the activity have to be considered. By the words "length" and "breadth" it seems that this court means repetition of activity by the petitioner. By the word "purpose of the activity" it seems that this Court means disturbance of public order. If the purpose of the activity is merely to earn profit, may be illegal by illegal means, it cannot be detriment to disturbance of public order. It is only when the purpose of the activity is to disturb even tempo of life of the society or residents of the locality that such purpose can be said to be prejudicial to maintenance of public order. Likewise by the word "effect of activity" this Court seems to be conscious of the fact that if the effect of the activity has potentiality of disturbing even tempo of life or the locality or society then it is a matter for consideration to come to a conclusion whether particular prejudicial activity affects even tempo of the life of the society or not. This Court on the facts of Gopal Gangaram's case (supra) proceeded to examine and observed that in view of the ofences which means plurality, registered against the detenu and the statements of witnesses it shows and suggests that the detenu has taken over occupation of dealing in liquor and carrying out the same uninterruptedly. This activity, according to this Court, is simplicitor commission of an offence under the Prohibition Act and if he does something more to carry out uninterruptedly then carrying on that activity which amounts to commission of offence under the Prohibition Act, may be an act, affecting the law and order, amounts affecting the public order. It is here that this Court has tried to demarcate the line between law and order and public order. By observing that if bootlegger is uninterruptedly carrying on his activity and further activity of threatening the witnesses on the pretext that they are police informent it amounts to law and order situation which has transgressed its limit of law and order and has entered in the area of public order. However, this approach does not seem to have been considered proper by the Apex Court in Piyush Kantilal Mehta's case (supra) which was followed in Rashidmiya's case (supra).

8. In Piyush Kantilal Mehta (Supra) at Page: 497 the Apex Court observed as under :

"It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act. his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order."

It is thus clear from the above observation of the Apex Court that it took into consideration the plurality of the incidents in which the petitioner was involved and he gave threat to number of witnesses and not only to one witness. The activities of the petitioner were considered to be bootlegging activity, but on the strength of such activity it was not considered by the Apex Court to be occupation of the detenu. Similar view was taken in Rashidmiya's case(supra). Here also four cases under the Prohibition Act were registered against the petitioner and one under various sections of the Indian Penal Code. These repeated activities were not considered by the Apex Court as prejudicial for maintenance of public order. Vague allegations that the detenu was a member of gang and was taking active part in communal riots was also overlooked by the Apex Court in Rashidmiya's case. In this case also mere bootlegging activities of the petitioner meaning thereby repetition of such activities was not considered per se to be disturbing public order.

9. In the light of above decisions a passing reference to the grounds of detention seems to be essential in concluding whether subjective satisfaction of the detaining Authority was proper or it was mere mechanical exercise on steriotype incidents narrated by the witnesses.

10. The grounds of detention indicate that only one case under the Prohibition Act was registered against the petitioner in this year (1998). No other case was registered against him. Consequently he cannot be said to

have repeated his activity as bootlegger within the meaning of Section 2(b) of the PASA Act.

11. Coming to the incidents narrated by the witnesses the detaining Authority, while giving brief account of the incidents dated 16.2.98, 23.2.98, 3.3.98 and 7.3.98 did not indicate that the activities of the petitioner were prejudicial to maintenance of public order or on account of those incidents the public order was disturbed on those dates. Regarding first incident of 16.2.98 the detaining Authority has disclosed that by the alleged activity of the petitioner atmosphere of fear had spread in the area, but there is no mention about disturbance or likely disturbance of public order. Regarding second incident of 23.2.1998 the narration is that on account of prejudicial activity of the petitioner the witnesses had run here and there and fearfull atmosphere was created in the area and vehicular traffic on the road was disrupted. There is again no mention of disruption of public order on account of this incident. Even for minor scuffle in a public place or near road such disturbance of traffic is not unnatural and not unknown. If a person shows knife towards another atmosphere of fear is likely to be created, but it is difficult to understand how even tempo of life of the society near the road stood disturbed. No mention has been made that shops, etc. situated near the road were closed. Regarding incident dated 3.3.1998 again only this much is mentioned that fearful atmosphere had spread in the area and routine business of people was disrupted but there is no mention that even tempo of life of the locality was disturbed. So is the case with incident dated 7.3.1998 where the allegation is that atmosphere of fear had spread in the area.

12. Moreover the incidents narrated by the witnesses do not indicate that the petitioner continued in his illegal activities of bootlegging. The incident dated 16.2.1998 occurred because the petitioner apprehended that particular witness was police informer. So was the apprehension in the mind of the petitioner regarding incident dated 23.2.1998. This apprehension has no direct nexus with the repetition of bootlegging activities. The other two incidents of 3.3.98 and 7.3.98 can be said to have some connection with bootlegging activities, but on the basis of these two unregistered offences and based on the statement of witnesses who refused to disclose their identity, repetition of anti-social activities in bootlegging crossing the limit of law and order and entering the realm of public order within the meaning of this Court's pronouncement in Gopal Gangaram Nepali's case (supra) cannot be accepted.

13. Thus, in view of the aforesaid analysis of the material on record it becomes clear that subjective satisfaction of the detaining Authority was mechanical and actually the activities complained of neither disturbed public order nor were likely to disturb the public order. Hence the liberty of the petitioner could not be curtailed under Section 3(2) of the PASA Act. The impugned order, therefore, becomes illegal and has to be quashed.

14. The writ petition is, therefore, allowed. The impugned order dated 25.3.1998 is hereby quashed. The petitioner shall be released forthwith unless he is wanted in connection with some other criminal case.

sd/-
(D. C. Srivastava)

* * * * *
sas